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Supreme Court, U.S.
FILED
DEC 6 1999
CLERK

No. 99-0270

IN THE

Supreme Court of the United States

MICHAEL T. COLLINS,

Petitioner,

v.

MONTGOMERY COUNTY BOARD OF PRISON INSPECTORS, JOSEPH WALSH, Individually, JAMES A. FREY, Individually, EDWIN NEGRON, Individually, ALFRED RICCI, Individually, MARK GRIFFITH, Individually, FRANK GRIFFITH, Individually, DAVID DOMBROSKI, Individually, JULIO M. ALGARIN, in His Official Capacity and Individually, DELORES MARTIN, Individually, LAWRENCE ROTH, in His Official Capacity, and UNITED STATES OF AMERICA

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. NO COMPELLING REASON EXISTS TO GRANT THE PETITION FOR WRIT OF CERTIORARI

Rule 10 of the United States Supreme Court Rules provides that review on a writ of certiorari is one of judicial discretion and not of right. Rule 10 also sets out the character of the reasons this Court will consider the grant of such a petition. Respondents submit that petitioner has not established a viable, sufficient reason to cause this Court to grant the petition at issue.

As set forth by petitioner, the United States Court of Appeals for the Third Circuit split evenly on petitioner's argument that certain fee provisions of the Prison Litigation Reform Act violated the Due Process Clause of the Fifth Amendment. Thus, the Court of Appeals did not enter a decision in conflict with the decision of another Court of Appeals. Rule 10(a). The opinion of the Third Circuit Court of Appeals did not decide an important federal question in a way that conflicted with a decision by a state court of last resort. Nor has petitioner averred that the Court of Appeals "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court" so as to call for this Court's supervisory power. Rule 10(a).

Petitioner has not challenged the decision of a state court of last resort. Rule 10(b). Finally, neither a state court nor a United States Court of Appeals has entered a final decision on an important question of federal law that has not been previously settled by this Court or in a way that conflicts with relevant decisions of this Court.

The United States Court of Appeals for the Third Circuit simply affirmed the order of the lower court upholding certain fee provisions of the Prison Litigation Reform Act. The Court of Appeals rendered no decision on the issue of whether those provisions violate equal protection of the law. Consequently, the petition here does not seek to challenge any decision of a state court of last resort or a decision by a Court of Appeals but merely that of a trial court.

Respondents recognize this Court has discretion to address other issues than those set out above, but the reason *must be compelling. Respondents assert that the* reason expressed by petitioner, i.e., that the vote of the Court of Appeals "portends the inevitable disharmony that will result in the absence of the immediate, authoritative treatment of this Court" is hardly compelling and is not supported by petitioner's very arguments.

Petitioner asserts that the question involved is of great practical importance. By way of pure, unadulterated bootstrapping, petitioner argues that the issue has exceptional importance because a rehearing *en banc* was ordered by the Court of Appeals. Otherwise, petitioner argues, without any factual support whatsoever, that the incentive of lawyers to accept court appointments to represent prisoners with meritorious claims will be reduced, if not extinguished, and that cases without lawyers will impose a burden on the trial courts because they will be harder to manage. However, petitioner does not cite to a decision by any court or any statistical data whatsoever that demonstrates that the challenged fee provisions have had such a chilling effect on counsel, has diminished the number of court appointments made by trial courts, or increased manageability concerns for those courts. In short, other than petitioner's musings about what could happen, no cogent, verifiable reasoning has been advanced by petitioner that lends any credence to his arguments in this regard. The same arguments were made to the trial court in 1997 and to the Third Circuit Court of Appeals in 1998 and 1999. Almost three years have passed since petitioner first raised these "practical" arguments and petitioner still has not referenced one particular instance where an attorney turned down a court appointment to represent a prisoner or a trial court has experienced difficulties in handling a *pro se* prisoner lawsuit.

For these reasons, respondents assert that the issues raised by petitioner are not of great practical importance and do not merit the exercise of this Court's discretion to grant the writ of certiorari.

II. THE PRISON LITIGATION REFORM ACT FEE RESTRICTIONS ARE RATIONALLY RELATED TO LEGITIMATE GOVERNMENT INTERESTS

Petitioner here did not challenge the use of the rational basis standard by the trial court; rather, petitioner claims that the fee provisions are not rationally related to the accomplishments of the governmental goal. Legislation is presumed to be valid and will be upheld if the classification created by the statute is rationally related to a legitimate state interest. *City of Cleburne v. Cleburne Living Center,* 473 U.S. 432, 440, 105 S.Ct. 3249, 87 L.Ed. 2d 313 (1985). In addressing such an analysis, it should be noted that

> rational-basis review in equal protection analysis 'is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.'. . . Nor does it authorize 'the judiciary [to] sit as a superlegislature to judge the desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.'. . . For these reasons, a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. . . . Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. . . . Instead, a classification 'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification' . . . and '[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it,' . . . whether or not the basis has a foundation in the record. Finally, courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it 'is not made with mathematical nicety or because in practice it results in some inequality.'

Heller v. Doe, 509 U.S. 312, 319-21, 113 S.Ct. 2637, 1256 L.Ed.2d 257 (1993) (citations omitted) (emphasis supplied).

It is clear that while the legislative history of the Prison Litigation Reform Act did not reveal a specific purpose in enacting these provisions, a general purpose was "to discourage the filing of frivolous suits and appeals by prisoners." *McGann v. Commissioner of Social Sec. Admin.*, 96 F.3d 28, 31 (2d Cir. 1996). *See also Zehner v. Trigg*, 133 F.3d 459, 463 (7th Cir. 1997); *Hernandez v. Kalinowski*, 1998 WL 386132 (3d. Cir, July 13, 1998 (*quoting Lyon v. Krol*, 127 F.3d 763, 764 (8th Cir. 1997)). The Congressional Record contains numerous comments regarding the purpose behind the Prison Litigation Reform Act. For instance, Senator Abraham stated that one goal was to reduce litigation which "raise[s] the cost of running prisons far beyond what is necessary," 141 Cong.Rec. S14312, S14316 (daily ed. September 26, 1995). Senator Abraham also commented that attorneys would no longer "be allowed to charge massive amounts to the state for the service of correcting minimal violations. And no longer will attorneys be able to charge very high fees for their time." *Id.* at S14317. Representative Carat stated that one goal of the legislation was to place a "common sense limitation on the recovery of attorney fees in prison litigation." 141 Cong.Rec. H1572, H1480 (daily ed. February 9, 1995).

The shifting of the payment of attorney fees to the losing party in a lawsuit brought under 42 U.S.C. § 1983 is not a constitutional right. Rather, it was created as the result of an act of the United States Congress when 42 U.S.C. § 1998 was enacted. Petitioner cannot assert that the same legislative body is not permitted to place limitations on the extent of this fee-shifting mechanism. In fact, should Congress choose, the entire legislation could be eliminated in its entirety. Thus, it is not irrational to allow Congress, while allowing prisoners to recover attorney's fees should they prevail, to place limitations on what that attorney can charge per hour or in total. Nevertheless, petitioner asserts that the Prison Litigation Reform Act fee provisions are irrational because they do not further the goal of discouraging frivolous suits and appeals, contending that the provisions are too narrow because they have no effect on prisoners bringing frivolous lawsuits and too broad

because they impact meritorious lawsuits. The trial court correctly rejected both of these arguments.

Because petitioner does not argue that prisoners are a suspect class or that attorney's fees provisions affect "fundamental rights," he must "negative every conceivable basis which might support" the challenged fee provisions in order to show that the district court's decision upholding the applications of these provisions was erroneous and must be overturned. Petitioner's arguments do not carry this burden.

Congress very well may have wanted to protect the scarce resources of governmental bodies, which would be accomplished by capping liability for fees. Attorney fees can be standardized and limited by placing a cap on the fees to 150% of the judgment. Limiting the fee provision to prisoners is reasonable as well, since Congress found this type of litigation to be so burdensome. *See* comments of Senator Dole, at 141 Cong.Rec. S14414 (daily ed. September 27, 1995) (the legislation will address the "alarming number of frivolous lawsuits" filed by prisoners). In addition, it is reasonable to cap the hourly rate for attorneys representing prisoners to 150% of the amount court-appointed attorneys representing criminal defendants may charge for the same reasons as advanced previously — to limit the total amount of fee awards. Moreover, as the trial court found, since court-appointed attorneys representing criminal defendants are effective, the limitation of hourly fee awards to attorneys for representing prisoners in civil actions to a percentage of what the criminal attorneys charge was certainly a reasonable limitation. Such speculation is sufficient for a rational-basis examination. *Beach Communications, Inc.*, 508 U.S. 307, 313, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993), *Madrid v. Gomez*, 1998 W.L. 351214 (9th Cir. July 2, 1998). Finally, Congress may have wanted to limit the potential windfall to attorneys by setting a fee cap proportional to the judgment. *See*, e.g., *Farrar v. Hobby*, 506 U.S. 103, 114 (1992), (affirming refusal to award large attorney's fees for a nominal judgment).

Even if the accommodations made by a government are illogical and unscientific, those accommodations may be justified because of the practical problems a government faces.

Metropolis Theater Co. v. Chicago, 228 U.S. 61, 69-70, 33 S.Ct. 441, 57 L.Ed. 730 (1913). The United States Congress, confronted with an onslaught of frivolous civil rights lawsuits filed by prisoners, concluded that one way to quell this flood of litigation was to enact fee provisions limiting attorney's fees. Certainly, these provisions have "some footing in the realities of the subject addressed by the legislation." *Heller, supra,* 509 U.S. at 321.

Presuming that it could be successfully argued that this legislation does have an impact on potentially meritorious lawsuits, that fact alone does not make it unconstitutional. "Courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality." *Heller, supra,* 509 U.S. at 321 (emphasis supplied)(citations omitted). The burden on petitioner is to negative "every conceivable basis which might support" the Prison Litigation Reform Act fee provisions. *Lehnhausen v. Lake Shoe Auto Parts Co.,* 410 U.S. 356, 364, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973); *Heller, supra,* 509 U.S. at 320-321. Petitioner did not met this burden before the trial court and the Court of Appeals and his challenge must fail.

Petitioner also argues that applying these fee provisions is arbitrary and invidiously discriminatory. But petitioner's argument again fails to reflect the proper context to apply the rational-basis test, that is, that the statute should fail only if there is no conceivable basis which might support it. Thus, petitioner simply can't prevail by contending that some special incident of prisoner versus non-prisoner might seem nonrational. It must be shown that all conceivable distinctions serve no legitimate government interest.

Petitioner cites *Rinaldi v. Yeager,* 384 U.S. 305, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966). But *Rinaldi* does not support petitioner's argument. There, the statute at issue imposed on an unsuccessful appellant the duty to reimburse the county for the cost of transcripts out of institutional earnings, thus singling out unsuccessful appellants who had been incarcerated,

because only incarcerated individuals have institutional earnings. Specifically, the Supreme Court ruled that the distinction drawn between incarcerated criminals and those who were sentenced only to pay fines was irrational because the only thing that "distinguishes [non-incarcerated convicts] from their institutionalized counterparts is the nature of the penalty attached to the offense committed," and "focusing on that distinction as a classifying feature in a reimbursement statute . . . bears no relationship whatever to the purpose of the repayment statute." *Id.*, U.S. at 309.

Unlike the classification in *Rinaldi*, with respect to the Prison Litigation Reform Act, the fee limitation plainly bears relationship to the very purpose of the statute, i.e., the deterrence of frivolous lawsuits. Congress had a rational basis for applying the fee limitation only to prisoners. Additionally, prisoners are in a critically different situation than other litigants. In *Roller v. Gunn*, 107 F.3d 227 (4th Cir. 1997), the Fourth Circuit Court of Appeals, rejecting an equal protection challenge to the Prison Litigation Reform Act's filing fee provisions, held:

> Prisoners are not similarly situated to non-prisoners. They have their basic material needs provided at state expense. They are further provided with free paper, postage, and legal assistance. They often have free time on their hands that other litigants do not possess. . . . As a result, the federal courts have observed that prisoner litigation has assumed something of the nature of a 'recreational activity.'

Id., at 234; *see also Carson v. Johnson*, 112 F.3d 818, 822 (5th Cir. 1997); *Mitchell v. Farcass*, 112 F.3d 1483, 1488-89 (11th Cir. 1997).

Thus, as the Court noted in *Madrid v. Gomez*, 150 F.3d 1030 (9th Cir. 1998), "it is certainly conceivable that, because of significant potential gains and low opportunity costs, prisoners generally file a disproportionate number of frivolous suits as compared to the population as a whole." *Id.*, at 1041-1042.[1]

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1. The decision in *Madrid* was subsequently withdrawn after this Court's decision in *Martin v. Hadix*, ___ U.S. ___, 119 S.Ct. 1998 (1999).

Accordingly, since prisoners ordinarily lack the economic disincentives of non-prisoners, it was rational for Congress to provide the disincentives contained in the Prison Litigation Reform Act to discourage prisoners from filing frivolous lawsuits.

III. PETITIONER HAS FAILED TO DEMONSTRATE THAT CONFUSION IN THE LOWER COURTS EXISTS REGARDING THE PROPER APPLICATION OF THE RATIONAL-BASIS TEST WHICH NECESSITATES THIS COURT'S ADDRESSING THE DECISION OF THE DISTRICT COURT

Petitioner argues that there somehow exists two disparate United States Supreme Court lines of cases applying the rational basis test, one demonstrating a blind deference to legislation while there is another exhibiting far less deference when a singled-out group is involved. Petitioner cites those cases but does not engage in any sort of analysis whatsoever as to the reasons behind the decisions by this Court.

Petitioner argues that this case is an example of confusion in the lower courts regarding the proper application of the rational-basis test. For support, he contends that three decisions by the Sixth, Seventh and Ninth Circuit Courts of Appeals, none of which were cited by the district court, demonstrate that this confusion reigns. But petitioner has not cited to any decision where there is any disagreement with or misinterpretation of the rational-basis test set out in *Heller, supra,* or that the district court here was confused. Moreover, petitioner turns the rational-basis test on its head by advancing that the burden rested upon respondents and the district court to identify a legitimate purpose advanced by the classification rather than acknowledging that it was his burden to negate every conceivable basis. This Court has always recognized that the burden is on the party challenging the legislation. The district court held petitioner to that responsibility. The trial court did not demonstrate a "blind deference" to Congress but found that legitimate governmental interests existed. Petitioner may not like what the trial court concluded and challenges those findings, but that does not translate into the bold

assertion that the district court was confused or misled by decisions of the other courts of appeals. Petitioner has not demonstrated either an absence of a rational basis or near total deference to the legislation at hand by the trial court.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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